

VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

09/03/98

JEFFREY W. WILLIAMS, Claimant

Opinion by the
Full Commission

v. VWC File No. 168-58-44

NEWPORT NEWS SHIPBUILDING & DRY DOCK COMPANY, Employer
- Self-Insured -

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for the Claimant.

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for the Defendants.

REVIEW on the record before Commissioner Dudley,
Commissioner Diamond, and Deputy Commissioner C. E. Mercer at
Richmond, Virginia.

The employer, Newport News Shipbuilding and Dry Dock Company, requests review of the May 6, 1998, Opinion of a Deputy Commissioner. The sole issue on review relates to the employer's entitlement to a credit for certain permanent partial disability payments it made pursuant to the Longshore and Harbor Workers' Compensation Act.

The only contested issue at the hearing in this matter was whether Jeffrey W. Williams, the employee, had adequately marketed his residual work capacity beginning May 21, 1997. The Deputy Commissioner concluded that he began reasonable marketing efforts on August 28, 1997, and awarded temporary

total disability benefits beginning on that date. Neither party disputes that award.

The parties stipulated that Williams sustained a compensable injury to his right thumb on January 13, 1994. They also agreed to the entry of a record award for various periods of temporary total and temporary partial disability benefits paid pursuant to the Longshore Act through May 20, 1997. The parties agreed that the employer was entitled to a credit for all payments made pursuant to the Longshore Act, and also agreed that Williams had sustained a 7% permanent partial disability to his right hand. Because the scheduled award for the loss of a hand is 244 weeks under the Longshore Act, the employer paid Williams 17.08 weeks of permanent partial disability benefits commencing May 21, 1997.

The Deputy Commissioner mistakenly entered an award under the Virginia Act for 17.08 weeks of compensation. Virginia Code Ann. §65.2-503 provides that the loss of a hand is worth 150 weeks of compensation, as opposed to the 244 weeks under the Longshore Act. Therefore, Williams is entitled to an award of 10.5 weeks of permanent partial disability benefits, as opposed to the 17.08 weeks which were actually paid. Thus, the employer is entitled to a credit against the outstanding temporary total disability award for this overpayment of the permanent partial disability award.

Although this error was brought immediately to the attention of the Deputy Commissioner, she failed to correct her award, necessitating this review. The claimant properly agrees that the employer is entitled to the credit which it requests. Such credit is mandated by law. Virginia Intern. Terminals v. Moore, 22 Va. App. 396, 470 S.E.2d 574 (1996)*aff'd sub nom. Moore v. Virginia Intern. Terminals, Inc.*, 254 Va. 46, 486 S.E.2d 528 (1997).

Therefore, the award entered by the Deputy Commissioner shall be MODIFIED to reflect the proper permanent partial disability award, and to grant the employer a credit for the payments it made pursuant to the Longshore Act. The award of the Deputy Commissioner is therefore replaced by the award set forth below.

AWARD

An Award for record purposes only is hereby entered on behalf of Jeffrey W. Williams, employee, against the Newport News Shipbuilding & Dry Dock Company, self-insured employer, for the payment of compensation as follows:

- Temporary partial compensation benefits in the weekly amount of \$160.03 from July 20, 1994, through August 28, 1994, inclusive; and from October 10, 1994, through January 29, 1995, inclusive;
- Temporary total compensation benefits, based upon a pre-injury average weekly wage of \$479.25, in the weekly amount of \$319.50 for the period January 14, 1994, through March 9, 1994, inclusive; from April 30, 1996, through December 8, 1996, inclusive; and

from January 9, 1997, through May 20, 1997, inclusive; and

- Permanent partial compensation benefits in the weekly amount of \$319.50 commencing May 21, 1997, and continuing for a period of 10.50 weeks reflecting a 7% loss of function to the right hand.

An additional Award is hereby entered on behalf of Jeffrey W. Williams, employee, against the Newport News Shipbuilding & Dry Dock Company, self-insured employer, for the payment of compensation as follows:

- Temporary total compensation benefits, based upon a pre-injury average weekly wage of \$479.25, in the weekly amount of \$319.50 commencing August 28, 1997, and continuing until circumstances require a modification.

The employer is entitled to a credit for all payments made to claimant as a result of this injury under the Longshore and Harbor Workers' Compensation Act.

Medical benefits are awarded pursuant to §65.2-603 for as long as necessary.

From the compensation awarded, a fee in the amount of \$1,400.00 is hereby approved in favor of John H. Klein, Esquire for legal services rendered the claimant.

This matter is hereby removed from the Review docket.

APPEAL

This Opinion shall be final unless appealed to the Virginia Court of Appeals within thirty days.

cc: Jeffrey W. Williams
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